A

NARRATIVE

OF THE

State of the Case (2)

BETWEEN

John Cromwel Esquire, and *Abigaile* his wife, } Plaintiffes.

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Thomas Berney Esquire, and *John Awcock* Gent. } Defendants.

EXTRACTED

Out of the Bill, Answers, Proceedings, and Proofes in the Court of *Chancery*.

Touching the Mannors of *Buckenham-Ferry*, and *Hassingham*, *Ornesby Burrough*, and *Scrotby* in the County of *Norfolke*.

Heretofore the Inheritance of Sir *Henry Cleere*.

LONDON, Printed 1652.

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1919-20:15

LONDON, Printed 1652.

John Cromwel *Esquire, and* Abigail *his wife,* } Plaintiffs.

The Lady Jane Denny *late widow, now the wife of Sir* William Cony Knight. Tho. Berney *Esquire, and* Dorothy *his wife, and* Joh. Awcocke, *Gent.* } Defendants.

The Effect of the Bill.

THat 14. *Car.* by Information in the Court of Wards for the Plaintiffe, then a Ward, against *John Smith*, and *John Awcocke*, and other their Trustees, it was charged.

That Sir *Henry Cleer* was seised in Fee of the Mannors of *Buckenham-Ferry* and *Ormesby* &c. in *Norfolke*. And that *Smith* and *Holl*, when hee was young, got him into severall Mortgages, and a Statute of 2000 li. and to mortgage to the lady *Mountford*, and to convey other parts to others, and in his sickness aiming at his whole estate perswaded him to make Assurances of his lands in trust to be sold, pretending there would be provision of 3000 li. for the Lady *Merriel Cleer* his wife, and an overplus for her child.

Aug. 28. 20. *Jac.* An Assurance was prepared by way of bargaine, and sail for 10000 li. mentioned to be paid by Sir *Hen. Bedingfield*, and others, and sealed to him the said Sir *Hen. Bedingfield*, Sir *Tho. Herne*, *Tho. Knevett* Esquire, and *Henry Best* Gentleman, and their heirs, which was inrolled.

A Declaration of Trust was made at the same time that the lands should be sold within two yeares after Sir *Henry Cleers* death, and the profits to bee received and raised by sale, should bee imployed according to the Trust.

The Trust.

1 To permit Sir *Henry Cleer* to take the profits for life.

2 After Sir *Henry* his death, to permit Dame *Merriel Cleere* his wife to receive the profits till sale.

3 With the money raised the debts to be paid.

4 The debts being paid to pay 3000 li. to Dame *Merriel*, she releasing.

5 The overplus to bee delivered to her for the Plaintiffe *Abigail*, or such childe as she should after have.

Sir *Henry Cleere* dyed.

That *Smith* and *Holl* opposed finding the Office.

That *Smith* and *Holl* (and Lady *Cleere*) by their procurement, preferred a Bil in Chancery against Sir *Hen. Bedingfield* and other Trustees to have the lands sold according to the Deeds.

Trustees answered, and thereby submit, to do what the Court directs therein.

April 25. 3. *Car.* the cause was heard upon Bill and Answer.

Decreed

Decreed.

1 That the Lands should be sold, and the monies applied according to the Trust.

2 To pay debts first.

3 A Commission awarded to examine debts.

4 A time prefixed for Creditors to come in.

That *Smith* and *Holl* kept off Purchasers, declared that the Lands were much incumbred, and *Holl* claimed *Buckhenham-Ferry* by a Mortgage, and extended his Statute.

Smith and *Holl* agreed to give 4000 li. for the purchase, moved the Court to have a reference to Justice *Harvey*, which was ordered.

May 13. 4. *Car.* That Mr. Justice *Harvey* considered of the Decree and proceedings, and certified what he thought fit to bee done therein.

Smith and *Holl* were Justices of Peace in *Norfolke*, had so much credit with Mr. Justice *Harvey*, that he credited what they said without proof upon oath, and certified,

1 That the Land was better worth then 4000 li. but in respect of incumbrances, hee thought fit the Trustees convey to *Holl* and *Smith*, who were willing to deale, deducting their owne debts. Iudge *Harvies* Certificate.

2 To be detained by *Holl*, due by Mortgage 1700 li.

3 By *Smith*, 1000

4 Mrs. *Dorothy Mountford*, 900

5 The Lady Steward, 150

6 *Love*, 100

7 *Hughes*, 100

8 And 50. li residue of the 4000 li. to the Lady *Merriel Cleere*.

The Certificate was confirmed.

The

The Truſtees made aſſurance to *John Fountaine* and others in truſt for *Smith* and *Holl*, whereby for 4000*li.* they have got 1000*li. per an.*

Smith and *Holl* compounded incumbrances at eaſie rates.

Sir *Edward Cleer* that had 400*li. per an.* for his life tooke 200*li. per an.* and forced the Lady *Merriel Cleer* for 400*li. per an.* for life to accept 200*li. per an.* who was then ſickly, and dyed within two years.

That the allowance to *Holl* for intereſt was not moderate according to the decree.

Smith and *Awcocke* two years after bought out *Holls* mortgage for 1200*li.* and *Smiths* debt was not reall.

June 23. 16 *Car.* Cauſe was heard in the Court of Wards.

Declare that *Smith* and *Holl* were no clear purchaſers; therefore decreed they ſhould accompt, and re convey.

The Plaintiffe *Abigail* married the other Plaintiffe, and an information by way of revivor put in, the defendants *Smith* and *Holl* anſwered.

An accompt put in, but before any accompt perfected, the Court of Wards was taken away.

Febr. 1645. After Petitions in Parliament the accompt was referred to Sir *Benjamin Rudyard*, and Mr. Attorney of the Court of Wards, but after, the whole buſineſſe referred to be determined in Chancery.

A third part was, after the office found, ſettled by injunction of the Court of Wards, upon the Plaintiffe *Abigail* heire at law.

The

The charge of the Bill in Chancery was, that *Smith* and *Awcocke* being dead, *Jane Denny*, and *Dorothy Berney* Daughters, and Heires; and *Tho. Berney*, *Dorothies* husband, & *Awcock*, son of *Awcock* deceased, received the profits of all the third part allotted by the Court of Wards to *Abigail*, and to have accompt and re-assurance of the lands was the effect of the Bill. The Bill in Chancery.

The Defendants by Answer set forth.

THat 17. *Jac.* The Lands were settled upon Sr *Henry Cleer* charged with severall rents and incumbrances, *viz.*

1. One annuity for the life of the said Sir *Edward*, 400*li. per annum*

2. One other during the Lady *Meriels* life, if she survived Sir *Henry*, of 400 *li.*

3. One other during the life of the said Sir *Edward*, if he survived his wife of, 200*li.*

4. One other to Dame *Margaret* his wife, if she survived Sir *Edward*, of 200*li.*

5. One other in case Dame *Margarett* dye, and Sir *Edward* marry a second wife for the life of such second wife, of 200*li.*

Easter Terme. 18 *Jac.* Sir *Henry Cleere* sufferreth a Recovery to cut off the intaile.

Sept. 10. 18 *Jac.* Sir *Henry* for 100*li.* gran's an Annuity of 10*li. per annum* to Dame *Abigeil Moundford* issuing out of part of *Buckenham*.

Iune

June 20. 19 *Iac.* Sir *Henry* for 1000*li.* borrowed of Mr. *Holl*, mortgaged a moiety of the mannor of *Buckenham*, to pay 1100*li.* *July* 1622. and enters a recognizance of 2000*li.* additionall security.

July 5. 19 *Iac.* Sir *Henry* for 800*li.* borrowed of Mrs. *Dorothy Moundford* mortgages the residue of the said Mannor of *Buckenham* to pay 880*li.* *July* 8. 1622.

Another mortgage to *Love* for 100*li.* besides divers Iudgements and other Debts.

Iune 1621. 19. *Iac.* An Agreement, that Sir *Edward* hold *Ornesby* in liew of his annuity of 400*li. per an.* made by him and Sir *Henry* his son.

Aug. 18. 20 *Iac.* Sir *Henry* having thus charged his estate falls sicke, and in the time of his sickness, by his Indenture conveys all the premises for the consideration of 10000*li.* paid to Sir *Henry Bedingfield* Sir *Tho. Herne*, *Tho. Knevet Esq*; and *Henry Best* gent. and their heires.

The Indenture is inroled.

And by another Deed of the same date declares the trust of the sale to be.

1. That the Trustees within two yeares after his death sell the premises at the best price.

2. Till sale, his Lady to receive the profits towards payment of his debts.

3. His debts to be paid with the money raised by the sale.

4. After debts paid, his Lady to have 3000*li.* in liew of her annuity of 400*li. per an.*

5. The residue to be for the now Plaintiffe *Abigail* then an Infant, and within two or three dayes after Sir *Henry* dyed.

After

After Sir *Henry Cleers* death the Truſtees offer the premiſes to ſale, but in reſpect of the incumbrances none would deale, and the interruptions of Sir *Edward Cleer*; the lands being but 554*li.* 12*s.* 8*d.* *per an.*

The Lady *Merriell Cleer* by ſome order made by the Lord *Hobart*, between Sir *Edward* and the Lady, ſhe was to injoy *Buckenham*, which ſhe offered to let for 250*l.* *per an.* in lieu of her annuity of 400*l.* *per an.* in reſpect of the incumberances charged thereupon by Sir *Edward*, and for his debts, nothing ſhe made of it in two years. The Lady *Cleers* Letter.

Aug. 13. 22 *Jac.* The Lady *Moundford* and Mr. *Smith* being bound for Sir *Henry Cleers* debts, which came to about 600*l.* and Mr. *Holls* debts being 1200*l.* they were contented to take a conveyance of the reverſion of the Mannor of *Ornesby* at 2000*l.* and a conveyance was drawn and ſealed, but not inroled; ſome of the Truſtees being fearfull to bee queſtioned becauſe of the great diſproportion between what the Land was then really worth, and what Sir *Hen. Cleer* eſteemed it at. First intended purchaſe by *Holl* and *Smith* within the time limited by the deed of Truſt.

Novem. 8. 22 *Jac.* Sir *Edward Cleer* for 400*l.* fine, and 200*l.* *per an.* demiſeth *Ornesby*, *&c.* to *Claxton* and *Howard*, in truſt for *Smith*, for 40 years, if hee ſo long live.

Hillary terme 22. *Jac.* the Lady *Moundford*, the Lady *Cleere*, Mr. *Smith*, and other creditors of Sir *Hen. Cleer*, exhibite their Bill in the court of Chancery againſt the Truſtees to compell them to ſell.

In proſecution whereof the Lady *Moundford* was cheiſe, and did prefer her Bill into Parliament, to have the land ſold.

Eaſter Tearm, 1 *Car.* The Feoffees anſwer, and the

reason why they did not sell, was the disproportion of the value, were willing to do as the Court should direct

Maii 30. 1. *Car.* The Court directs a Commission to issue to Sir *John Corbet*, Sir *John Holland*, Sir *John Henningham* and Sir *Robert Gaudy*.

1 To examine the value of the Lands upon oath.

2 The incumbrances and debts.

3 To procure a Purchaser.

Comissioners Certificate.

Commissioners certifie the Annuities and Debts as aforesaid, *viz.*

1 The Mortgage to *Holl.*

2 The Mortgage to Mrs. *Dorothy Moundford.*

3 The Mortgage to the Lady *Steward*, Lady *Moundfords* Rent charge, *Loves* Mortgage, and Five Judgements of 800 li.

4 *Greens* Farme leased to the Lady *Moundford*, and *Smith* to secure them against debts, they were ingaged for Sir *Henry Cleere*, which came to about 700 li. all paid by Mr. *Smith* (save *Claxtons.*)

5 The Mannors and premises to bee worth 554 li. 12 s. 8 d. *per annum, viz.*

Ornesby Burrough, and *Scrotby*,	288 li.	16 s.	0 d.
Buckenham-Ferry and *Hassingham*,	265	16	8

6 That in respect of the great Incumbrances, and the waste committed by Sir *Edward*, they could not procure a Purchaser.

Second intended Purchase of *Smith.*

Decem. 1. 2 *Car.* The Court upon that Certificate, order a Commission to set forth a Moyety of the Mannor of *Ornesby* to Mr. *Smith*, and to make up his debt of 730 li. 1000 li. for the purchase thereof.

Nothing was done thereupon.

The 25 of *April*, 3 *Car.* upon hearing of the cause

cause, the Court decreed the Feoffees to sell.

This Decree was inrolled 11 *Maii*; and no purchaser would deal in respect of Incumbrances.

May 13. 4 *Car.* The Court being informed that by reason of incumbrances, above 4000*li.* could not be got for all the lands, and that Mr. *Smith* and *Holl* would give so much, so as they might defaulk their debts. The Court ordered that,

1. Mr. Iustice *Harvey* consider of the Decree.
2. Direct the Assurances.
3. How the 4000*l.* should be disposed of.

1. *June* 19. 4 *Car.* The Iudge certifies that in regard of incombrances 4000*l.* was the best price. Judge *Harvies* Certificate.

2. The Trustees to convey to *Holl* and *Smith*.

3. To retaine to *Holl* 1700*li.*

4. To *Smith* 1000*li.*

5. To pay Mis. *Moundford* 900 *li.*

6. To Lady *Steward.* 150 *li.*

7. The Lady *Mar. Cleer* to have 200*l. per an.* for life.

8. The Lady *Merriell Cleer* to have *Buckenham* for her life, in liew of her annuity of 400*l. per an.* and to grant an annuity out of it to *Holl*, &c.

The Lady was content rather to accept 200*li. per an.* then *Buckenham, which was paid her.*

The 21. and 22 *July*, 4 *Car.* The Iudges report confirmed.

Holl and *Smith* drew Mr. *Awcock* to joyn with them in the purchase.

Aug. 31. 4 *Car.* The Trustees in pursuance of the orders, &c. convey to *Fountaine*, *Aldridge*, and *Sotherton* (persons trusted by *Holl*, *Smith*, and *Awcock*.) The purchase of the whole under the Decree in Chancery.

The 25 *Sep.* following, they pay the money directed to Mis. *Mundford* and others, who released to *Fountaine*, *Aldridge*. and *Sotherton*.

Love would not take his 100*l.* but held the Land mortgaged, nor could *Hughes* be found to accept his 100*l.* and discharge the Iudgement.

Sept. 30. 6 *Car.* Mr. *Holl* falling sick, gives his third part by his Wil to his Wife, or 1000*l.* in liew thereof, she accepts the 1000*l.* and *Holls* two sonnes for 1230*li.* sells it to *Smith* and *Awcocke* two yeares after.

Nov. 22. 8 *Car.* The Lady *Merriell Cleer* dyed, being thirty years of age or thereabouts.

In the yeare 1634. 10. *Car.* Sir *Edw. Cleer* dyed, his Lady living, who had 200*l. per an.* for her life who dyed not above two years since.

The Lady *Cleer*, and Sir *Edward* being dead, and their annuities thereby determined.

Hillary Term following, an information was exhibited in the Court of Wards against *Smith* and *Awcocke*.

Michaelmas Tearm, 1637. The office found, and the Mannor of *Ornesby* to be held in capite.

Colfer, and *Paynell* Councellers at Law.

At the finding of this office, the Defendants evidence was rejected, proved by *Colfer*, and *Paynell*.

Severall motions made to be admitted to traverse, or to have a *Melius inquirendum* but without successe.

May 20. 1638. A Division made, and the third part set out, and the profits received.

Easter Tearm 14 *Car.* Another information exhibited against *Smith* and *Awcocke*, wherein is suggested that *Smith* and *Holl* unduely drew Sir *Hen. Cleer* into

into great debts, to mortgage the greateſt part of his eſtate to them, and that they procured him upon his death bed, to make the conveyance to Sir *Hen. Bedingfield*, &c. and pretending a Truſt, prayed an account of the profits.

The Defendants by Anſwer ſet forth the former proceedings in Chancery.

Trinity Terme 16. *Car.* the cauſe came to hearing in the Court of Wards, And

DECREED,

That in as much as *Smith* and *Holl* were the principall Agents in procuring the Deed to be made by Sir *Hen. Cleer* to Sir *Hen. Bedingfield*, &c. and that the Court conceived that *Holl*, *Smith*, and *Awcocke* were not clear purchaſers, therefore decreed them to account and re-convey.

Octo. 30. 1646. In purſuance wherof accounts were exhibited, but before re-conveyance the Court of *Wards* being taken away, both parties applied themſelves to the Parliament, and by an order of Parliament the whole Matter referred to the Court of Chancery.

Plaintiffes Bill in Chancery.

Hillary Term following the Plaintiffs exhibite their Bil againſt *Smith* and *Awcocke*, and ſet forth the whole proceedings in the Court of Wards, & that they cannot by power of that Court (it being down) enforce obedience to the Decree, but for releiſe appeale to the Court of Chancery according to the order of Parliament; and that the Defendants may ſet forth how they hold the ſaid lands, may make re-aſſurance according to equity and intent of the ſaid Decree, and that by Decree of the ſaid Court they may receive releiſe, in all and every the premiſes.

The Defendants Answer

The Defendants answered, and thereby set forth the purchase under the Decree of the Court of Chancery, and the truth of their case, and that they conceived their Inheritance ought not to bee bound by the proceedings in the Court of Wards, there being no Tenure in capite, nor any trust proved, but that they were clear Purchasers under the Decree of the Court of Chancery, not subject to any trust or accompts, and that there was not any question made till the annuities and other charges for lives ended, and desired they might he not be prejudiced by the unjust proceedings in the Court of Wards against which they complained in Parliament.

May 6. 1650. the cause came to bee heard (though the Plaintiffe Mr. *Cromwel* had not taken the Ingagement, which was moved to stay proceedings, but disallowed, (the Court not being full) and a Decretall Order pronounced whereby it was declared.

1. That *Holl* and *Smith* were the originall Trustees of Sir *Hen. Cleer.*

2. That the estate they claimed, was by them gained from Sir *Henry Cleer* in the extremity of his sickneſſe, upon pretence that the Plaintiffe should be provided for, and the debts paid.

3. That the Decree and conveyances whereby they would make themselves Purchasers, were obtained upon false informations, irregular proceedings, and in abuse of the Court.

And the Lords Commission. that were then present

DECREED,

The last Decree of Court of Chancery.

1. That the conveyances obtained by *Holl*, *Smith*, and *Ancock* be set aside.

2. The

2 The Defendants being paid and ſatisfied, what ſhall appeare to have been really diſburſed by *Holl Smith* and *Awcocke*, or due to them from Sir *Hen. Cleere*, diſcounting meane profits with damages, ſhall re convey.

3 That the Accompts be referred to Mr. *Rich* and Mr. *Hackwel.*

4 It was ordered that if the Defendants will keep poſſeſsion, they ſhall give ſecurity, or elſe the Plaintiffes giving ſecurity to pay what ſhall be due to the defendants upon Accompt, ſhall have the poſſeſſion. Which Decree was ſigned and inrolled.

After ſome Orders the Defendants gave ſecurity accordingly to ſecure the meane profits, ſince the Decree.

Berney gave Recognizance of 1000 Marks.
Awcocke gave Recognizance of 1000 li.

Subſequent proceedings in Court after the Decree.

Julii 18. 1650. Ordered a Commiſsion iſſue into the Country to examine and cleer the Account returnable the firſt of *October.*

The Plaintiffes had the carriage of the Commiſſion, and 16. of September, was the firſt day of the Commiſſioners meeting, and they ſpent foure dayes time, and could attend no longer.

Upon oath made that the Defendants had divers witneſſes which for want of time, could not be examined.

Octob. 18. 1650. Ordered the Defendants deliver the names of their witneſſes and places of abode, and examine them in Court within three weeks.

Names were given, and it was moved for the Defendants.

ſendants in reſpect of the ſhortneſſe of time, the diſtance of place, and many witneſſes, that Commiſſion might iſſue to examine them all in the Country.

Novem. 7. 1650. Ordered the Defendants have a Commiſſion to examine onely thoſe that could not travel without danger of life, and it was Ordered that the Rents bee brought into Court, and the ſecurity given by *Berney* and *Awcocke*, diſcharged.

Decem. 2. 1650. When the Court had denied a Commiſsion to examine any other witneſſes, but ſuch as were unable to travell; one of the Plaintiffes counſel conſented, and it was ordered that the Defendants ſhould have a Commiſsion to examine all their witneſſes by the firſt day of the next Terme.

Mr. Chute.

Maii 6. 1651. The Maſters by report deſire the directions of the Court concerning the time of the riſe of the Account.

1 Whether *Bernies* Accompt ſhould begin *Michaelmas* 1624. or *Michaelmas* 1628.

2 Whether *Awcocks* Account ſhould begin *Michaelmas* 1628. or *Michaelmas* 1633.

The Court differed in opinion, but it was then Ordered that *Berney* ſhould accompt from 1624.
Awcocke from 1628.
Notwithſtanding they both claimed under eſtates for life, precedent to the Deed of Truſt to whom (*ſc.* to Sir *Edward Cleere*, and Lady *Merriel Cleere*) the Plaintiffe was neither Executor, nor Adminiſtrator,

After

After a long attendance upon the Masters, and hearing Councel on both sides, Mr. *Rich* certifies due

To *Awcocke*	3099 li.	10 s.	4 d.
To *Berney*	1838.	05.	4.

Mr. *Hackwil* differs, and certifies by way of exception to Mr. *Rich* his report.

June 23. 1651. Upon debate concerning both Reports (the Court not being full) 1000 li. was dis-allowed, which was certified to bee laid out in improvements, and 728 li. for repayres to *Awcocke*, and not any depositions permitted to be read for making it out, though offered. See the Affidavit against Hackwel.

And concerning *Holls* 1000 li. secured by Statute, it was ordered, no more be allowed then was really paid with damages, though the sum was ascertained by defeizance two and thirty yeers since, and the Defendants being strangers.

Julii 11. 1651. Upon suggestion that the Defendants delayed the Accompt, the Court decreed the possession to the Plaintiffe, although it was then offered by the Defendants in Court, to prevent the taking away of possession, that the Plaintiffes should have all the Accruing profits of the said state giving security.

And although it was then offered likewise by the Defendants in Court, that the whole accompts should be referred to any of the Plaintiffes counsel, the same was not excepted.

The Plaintiffes have by the said order gained the possession, and the Defendants have neither land nor money, nor any security given, as the Decree directed.

The Truth hereof appears by the pleadings, and other proceedings.

The Griev vance.

THe Defendants conceive upon the whole matter they are very ſtrictly dealt with all; both in reſpect of the nature of their caſe, and the proceedings.

They were not the parties truſted, but Sir *Henry Bedingfield*, Sir *Tho. Herne*, *Tho. Kneveit* Eſq. and *Hen. Beſt* Gent. who were, and are kindred and friends of the Plaintiffe; ſome of them having been truſted and imployed upon ſettlement of the eſtate, between Sir *Ed. Cheere*, and Sir *Henry* his ſon, upon marriage of the ſaid Sir *Henry*, with Lady *Merriel*, the Plaintiffes mother.

What was done, was, when Sir *Hen. Cheere* was of perfect underſtanding, and done to a juſt end, to have the land that was much incumbred, ſold within two yeares to pay debts.

The Contracts that *Smith* and *Holl* made, was after by faire and due proceedings approved by the Court, and there was a Decree that the land ſhould bee ſold, after a valuation was made by Gentlemen of very good account, by force of a Commiſsion directed to, and executed by Sir *Joh. Holland*, Sir *Joh. Henningham*, Sir *Joh. Corbet*, and Sir *Robert Gaudy* Commiſsioners. And after upon a Judges Certificate that 4000 li. was the higheſt value could bee got for the Land, conſidering the preſent charges and incumbrances.

And there was nothing then done, but if the ſame were now to bee done, it is humbly conceived in the uſuall courſe of Juſtice would be done.

For all the yeerly payments, the debts due by Mortgage and Statute that were reall charges upon the Land, ought to be allowed.

The

The value of the lands then was but *per an.* 554li. 12s. 8d.
Charges were for two lives 800li.
Charges in Reversion, besides other contingencies 200li.
Debts charged above 4000 li.

THere was no false Informations, no Irregular proceedings, no abuse to the Court; but upon the strictestexamination the proceedings in the former cause, whereupon a Decree was gained in the Lord *Coventries* time, will appear to be just, and if by negligence of a Clerks Bill an answer be mis-layed, yet a Decree signed, and inroled, and executed, is not to bee avoided: And the Defendants Ancestors were purchasers of Reversions, clogged and charged with incumbrances, but were encouraged by the Decree of the Court to purchase, and the Trustees sold to them by force of the Decree.

Smith Holl, and *Awcocke* were purchasers under the Decree, they thought they had a hard bargaine.

Holls part was left by his Will to his wife, or 1000 li. she made choice of the 1000li. which proves it not to be worth the third part of 4000 li. and *Holls* sons paid her the 1000 li. and sold the Reversion to *Smith* and *Awcock*, for 1230 li. which was lesse then the summe allowed by Judge *Harvies* report by 470 li.

Smith agreed with the said Sir *Edw. Cleere* for his Interest for life.

Awcocke tooke a Lease from the Lady *Merriel Cleere* for her life.

Awcocke was a stranger to all the proceedings, but was encouraged by the Decree to purchase.

The estate was much out of heart, and at his charge his part of the premises, is improved above a third part, besides charges in building, and repaire.

And when *Awcocke* purchaſed, it was with the free conſent of the Lady *Moundford*, the Lady *Steward*, and the Lady *Merriel Cleer* the Plaintiffes mother.

And yet the Teſtimony of the Lady *Moundford*, and Lady *Steward* is the chiefe ground of the laſt Decree.

See the Lady *Moundfords* Letter.

And upon the hearing in the Court of Wards it was declared that neither the ſaid *Holl* or *Smith* were guilty of any fraud or practiſe.

If there were any breach of Truſt, the parties truſted (if guilty) ought to bee condemned, and not the purchaſers, who have no more to doe, but to look to their aſſurances, and pay their money, which was done by diſcharging Statutes, Mortgages, and other, wiſeas was directed by a Judge, warranted by order of the Court, againſt which Judge nothing was ever objected of corruption, nor any practiſe proved ſince his death. Nor was there any queſtion made in ſeven years, til the eſtates for lives, and the charges determined, and when by accident after ſeven yeers that the bargain proved a good bargain, then, and not before the Suite in the Court of Wards was commenced, wherein the proceedings were unuſuall, if not unjuſt.

It is a Preſident of a dangerous conſequence, that Heirs and Aſſigns of purchaſers (as the Defendants are) ſhould be queſtioned, and forced to acccompt after ſuch a length of Time.

And it is conceived that if Tenant for life, or one that hath a Rent for life, and after the Reverſion is ſold, and hee agree with the Reverſioner for his own eſtate, though the Grantee of the Reverſion get a good Bargain, yet the Heire, if he were intituled to an Equity, ſhall never have any abatement in reſpect of the Purchaſers good bargaine; but the charge ſhall continue as good a charge upon the Lands (as to the Heire) as it was in the Anceſtors time.

(Yet the Court hath directed otherwiſe) By

By the Decree made upon the hearing, the Defendants were to have the money that upon account should bee due, and then part with the possession and re-assure.

But though the money reported, being 5000 li. and more is not paid, (that not being the third part of what is really due) yet possession is taken away contrary to the very Decree, signed, and inrolled, which is very unusual and scarce to bee matched with a president, especially the Defendants being in no default, but having given security as the Decree directs, yet by Order subsequent to the Decree, the security discharged, and possession given away, so as the Defendants are without remedy, which is the more strange, in respect, as they conceive a Trustee or Mortgagee that is in possession is not in Equity, to part with the possession till the money due be paid.

And the proceedings were very strict, and the usuall liberty of Examination not admitted.

The Defendants therefore humbly propose that for their relief in Justice, these things may be done.

1 THat the first Decree in Court signed, and inrolled may stand, and that their Interests that claime under it as purchasers may be held and injoyed.

2 That nothing be demanded from them but the purchase money, which they are ready to give cleer satisfaction that it is all paid.

3 That the former Decree that hath been executed, may not be reversed, or avoided but by Bill of Renew, & not by an original Bil brought by one that was no party.

4 That the precedent estates ought not to be questioned being absolute, and setled upon just and valuable considerations, precedent in time, to the practise that is pretended.

5 That

5 That the Accompts (if any be) should not bee of any other estate then what was conveyed, which was of Reversions, not of Lands in possession, when the same fell, and not before.

6 That the Defendants being Heirs and Assignes of Purchasers under the Decree of the Court, ought not to bee questioned after three and twenty yeers and more, no question being made till the estates fell.

7 And if there were any ground to have any re-assurance, or accompt (which they conceive ought not to bee) yet that the possession ought to bee restored to the Defendants, and not be taken from them, till all the mony and damages, which was really due, and disbursed, be paid.

An Epitome of the whole Case stated.

SIR, *Edward Cleer* Tenant for life of part, the Reversion to Sir *Hen. Cleer*, mortgaged part of the Lands held in Fee-simple, and charged the same with a Joynture, and with Rents for two several lives, and was indebted by Mortgages, Statute, and otherwise, for which the Lady *Mountford* and *Joh. Smith* Esq. were bound.

By Deed inrolled for 10000 li. mentioned to be paid, bargaines, and sels to Sir *Hen. Bedingfield*, and others, and their Heires, and by a Deed dated at the same time, the Trust is declared, that the Lands should be sold at the best value within two yeers, and that with the Rents, Profits, and Purchase-money, debts should be paid, and 3000 li. raised for his Lady in lieu of her Joynture, and the over-plus to come to the Heire, the Plaintiffe *Abigail*.

The Trustees endeavour to sell, but cannot.

Some Creditors desire to purchase, but in respect of Incumbrances will not give so much, as Sir *Hen. Cleer* estimates it to be in value.

The Trustees were loath to sell at any lower value.

Smith a Creditor for 400 li. purchaseth a Lease from Sir *Edw. Cleer* for forty yeers, if Sir *Edward* so long live, at 200 li. *per annum* the Lands being of better value.

The

The Lady *Moundford*, *Smith*, and other Creditors, preferre a Bill into Chancery against Sir *Hen. Bedingfield*, and the other Truſtees, and againſt *Tho. Holl* to have the Land ſold according to the Truſt.

The Truſtees anſwer and confeſſe the truſt, and ſet forth the reaſon why they ſell not, becauſe of the diſproportion of the value, but were willing to doe what the Court ſhould direct, and *Holl* anſwered.

The cauſe was heard, and a Commiſſion directed to Gentlemen of credit to examine the values of the Lands, the Debts, and Incumbrances, and to procure a Purchaſor.

Who by force of the Commiſſion, examine and certifie the great charges, and values, and that in reſpect of the Incumbrances, they could not procure a purchaſor; And

The 25. of *April*, 3. *Car.* It was decreed that the Lands ſhould be ſold by the Truſtees, and the Decree is inrolled 11. of *May* following.

There was a Reference to a Judge to examine the values and debts, and to thinke of a courſe whereby the truſt might bee performed, and the Decree be executed.

The Judge certifies 4000 li. the beſt value, and that *Smith*, and *Holl* agreed to purchaſe, and certifies how the money ſhould be paid, and his certificate is confirmed.

In *Aug.* 31. 4 *Car.* The Truſtees convey to *Aldridge*, *Fountain*, and *Southerton*, &c. perſons truſted for *Holl*, *Smith*, *Awcocke*, and they pay the purchaſe money.

The eſtates for lives determine.

There was a Bill in the Court of Wards; And

A Bill in Chancery was preferred by the Heire of Sir *Hen. Cleer* againſt the Defendants, upon a pretence that *Holl* and *Smith* were parties to the procuring of the Deed, and gained the eſtate at an undervalue and to have an accompt, and a re-aſſurance.

The Defendants ſet forth the truth of the Caſe and deny all fraud and practiſe.

The Cauſe comming to the hearing (and the Court not being full) it was decreed that the Defendants ſhould account, and be reimburſed the mony that *Holl* and *Smith* had really diſburſed or was due, and upon payment ſhould re-aſſure; But upon ſecurity to anſwer meane

profits.

profits ſhould keep the poſſeſſion. Or if they refuſe, then the Plaintiffe upon ſecurity to pay what upon account ſhould bee due to the Defendants, ſhall have the poſſeſſion.

The Defendants give Security.

Its reported by Mr. *Rich* 5000 li. due to the Defendants, and yet the ſecurity by them put in is diſcharged, and no ſecurity put in by the Plaintiffs, nor money paid, and yet the Plaintiffs are put into poſſeſſion by the Order of the Court.

And a direction is given to the Referees that take the account, that the Defendants ſhall account for the profits received, during the continuance of the particular intereſts, purchaſed in 1624, and 1628. from Sir *Edw. Cleer*, and Dame *Merriel Cleer* Tenants for life.

The Defendants are Heires and Aſſignes of Purchaſors that claime from the Truſtees, under the Decree of the Court, made above twenty yeares before this laſt decree, and their contracts warranted by certificate of a Judge and order of the Court.

The conſideration they paid was as much as the lands were worth conſidering the incumbrances, charges and particular eſtates in being.

The decree and ſale that was made 1628 were juſt to be done now, if things were now in the ſame condition as then they were.

Yet by the decree of the Court of Wards a third part was taken away during the Wards minority, which made the bargaine prejudiciall to the Purchaſor, when as the value of the whole was but 4000 li. Yet after full age the plaintiffs kept poſſeſſion of a third part.

And notwithſtanding there is due 5000 li. and twice as much more upon a faire account (juſt liberty of examining witneſſes being admitted) wil be found due to the Defendants, yet no mony is paid, nor ſecurity given; but poſſeſſion of the whole is taken away contrary to the firſt and laſt Decree in the Caſe.

FINIS.